

REMARKS

This responds to the **August 18, 2008** Office Action.

In the Office Action, claims 16-48 are noted as pending in the application, claims 16, 17, 19-33, 35, 39-41 and 44-48 stand rejected, no claims are objected to and no claims are allowed. Claims 18, 34, 36-38, 42 and 43 have been withdrawn from consideration.

By this amendment, claim 46 is canceled without prejudice.

Drawings

There is no indication in the record that the drawings filed March 24, 2004 have been approved. Applicant respectfully requests an indication that the drawings have been approved.

Rejections

Claims 16,17,19-33, 35, 39-41 and 44-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albert (2004/0033293) in view of Luhadiya (2002/0187220), or vice versa, i.e., Luhadiya et al. ('220) in view of Albert ('293), both further in view of Maegli (5,298,268), Chen et al. (2004/0109932), Schleider (WO 99/09871), Emig (2004/0005385), Rhode et al. (2002/0062741), Fiorella (3,824,322), Holloway et al. (4,828,858), and Hoover (4,647,463). The claims are also rejected employing Chen et al. ('932) as the primary reference over the same group of references.

These rejections are respectfully traversed for the reasons set forth below.

Initially, it is noted that the claims are in the format of "consisting essentially of", and to the extent the Office Action relies on applied art incorporating significant elements not recited in the claims, for example claim 16, the rejections are not supported. For example, the Chen patent application discloses only compositions using a food-grade acid, and the Office Action makes no showing as to how an acid composition, even for an adhesive, relates to the compositions as claimed. Therefore,

any rejections based on Chen are not well supported, and such rejections will not be addressed further herein.

It is also noted that the Office Action discusses concentrations of the various elements of compositions in the applied art only when discussing Albert and a possible surfactant or viscosity/texture modifier concentration of more than zero. The Office Action mentions no other concentrations. The Office Action seems to focus on demonstrating that film/adhesive/bonding compositions (i.e., edible, adhesive coating compositions) are conventional and well-known, but seems to omit any consideration of concentrations of components that might be useful in coating such services as plastic and glassware. Applicant's compositions can be used on plastic and glassware, have good adhesive properties on the plastic and glassware, and retain powdered or granular flavor components well. Applicant's compositions improve wetting of the composition to drink ware, and use adhesive concentrations never before used in these edible compositions. While it is understood that applications of these adhesives may vary, as demonstrated by the applied art, Applicant has found edible compositions that are well suited to Applicant's stated applications (drinkware, etc.), at concentrations that the applied art never considered possible. It is respectfully requested that all claim elements be considered in the Office Actions and reasons expressed as to why the recited compositions would not be obvious in view of the applied art.

None of the applied art, taken singly or in combination, teach or suggest the claimed compositions. None of the applied art use adhesive in their compositions below 40%, and it is clear that those skilled in the art required adhesive compositions greater than 40%. In fact, the applied art taken as a whole teaches that desirable adhesive concentrations are more in the range of 60% to 80%. If anything, adhesive concentrations of 45% or even approaching 40% are more the exception than the rule.

In the present application, the independent claims as amended all recite an adhesive between 9% and 36%. None of the applied art even recognizes let alone teaches or suggests that such low adhesive concentrations can produce a usable composition. As noted above, all of the adhesive concentrations are at least 40% and

the general consensus is that usable concentrations are in the range of 60% to 80% or higher.

A number of the applied references use emulsifiers or dispersing agents, and to the extent that any of those references use a surfactant, the surfactant is used as an emulsifier or dispersing agent. Applicant's surfactants are used as wetting agents and not as an emulsifier or dispersing agent, as noted in the Declaration of Brian Grady, attached hereto as Exhibit 1. The only applied reference that might be argued to use a surfactant as a wetting agent is Luhadiya, but their surfactant is used in combination with an adhesive concentration of at least 45%. Therefore, the applied references fail to teach or suggest the claimed compositions.

Dr. Grady is a noted expert in the area of wetting agents, emulsifiers, adhesion and polymers. As noted in his Declaration, Dr. Grady teaches and has published many articles on subjects in his area of expertise. He has also been invited to talk on these subjects all over the world. Dr. Grady's Declaration presents specific facts why he believes the applied art taken as a whole does not teach or suggest the claimed inventions. For example, the Declaration presents reasons as to why one skilled in the art taking into account the applied prior art would not appreciate that adhesives such as those recited in Albert or Luhadiya could be reduced further and still have a composition with sufficient adhesive power. The Declaration also notes that emulsifiers and dispersing agents are not wetting agents, which means that the prior art using emulsifiers or dispersing agents are not relevant to the present claims.

Considering several of the applied references, Albert continues to suffer the deficiencies noted in Applicant's previous responses. Albert fails to suggest any form of surfactant or wetting agent, and Albert fails to teach or suggest any adhesive concentration below 40%. [See, Grady Declaration, paragraph 8.] In fact, the concentration of adhesive in the Albert example is given as 60%. Therefore, because Albert lacks one of the claimed elements, Albert alone or even in combination with any of the other applied references fails to teach or suggest the claimed combinations.

The newly cited Luhadiya reference teaches an edible particulate adhesive having an adhesive concentration with a lower boundary of 45%. [See, Grady

Declaration, paragraph 9.] Nothing in Luhadiya indicates that adhesive concentrations below 45% would be acceptable let alone effective in the compositions, and as noted in the Grady Declaration, nothing in the applied art suggest any adhesive concentrations lower than 40%.

Maegli uses an oil-based system with the emulsified water containing sugar components to put seasoning on snack food. An emulsifier is required. [See, Grady Declaration, paragraph 11.] The present claims do not recite any type of emulsifier, and therefore Maegli is irrelevant. Moreover, the Maegli oil-based system puts the adhesive concentration at minimally 75%. [See, Grady Declaration.] Additionally, Maegli clearly teaches an adhesive concentration much higher than that in the present claims and closer to what appears from the applied art to be the conventional concentration. Therefore, Maegli and the other applied art fails to teach or suggest that adhesive concentrations at or below 36% are even possible.

None of the other applied references teach or suggest any wetting agent or other compounds affecting wetting properties, and none teach or suggest adhesive concentrations as claimed. In fact, acceptable adhesive concentrations appear to be much higher. In view of the foregoing, and also in view of the detailed explanation and opinion set forth in the Grady Declaration, none of the applied references, taken singly or in combination, teach or suggest the claimed compositions. As stated by Dr. Grady, these compositions are nonobvious.

Applicant's Disclosure

Applicant's disclosure has been discussed previously and that discussion will not be repeated here. It is noted here, however, that support for the present claim amendments can be found throughout the application. Specific examples for the amendments relating to the adhesive can be found at page 4, line 20. The adhesive concentration range recited in the claims of between 9% and 36% is still generic to the claims and can be found in Example 6 in the specification as originally filed. The use of surfactants as edible wetting agents is also discussed throughout the application, including at page 5, lines 1-2, and 22, and at page 9, lines 5-7. As noted in the Grady

Declaration, those skilled in the art would recognize the compounds used in the application as adhesives and the compounds used in the application has wetting agents. No new matter is added.

Claims

Consider now the claims in the application.

Claim 16 is an independent composition claim and recites in part:

"consisting essentially of an adhesive between 9% and 36% by weight, water between 40% and 60% by weight, an edible wetting agent between 0.025% and 21% by weight, and a viscosity/texture modifier selected from the group of gums, carboxymethylcellulose and propylene glycol alginate between 0% and 3% by weight"

None of the applied references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or an adhesive between 9% and 36% by weight, and an edible wetting agent between 0.025% and 21% by weight. None of the applied art taken singly or in combination teach or even suggest that adhesives can be used in concentrations as low as 36% or even lower. All use adhesive concentrations 40% or greater, and the general rule seems to be in the range of 60 to 80% or more. While Albert refers to a lower boundary of 40%, Albert fails to include or even consider any type of wetting agent or surfactant. Luhadiya's lowest adhesive concentration is 45%, and there is no teaching or suggestion that any adhesive concentration in combination with a surfactant, wetting agent, emulsifier or dispersing agent would be anything below Luhadiya's 45%. Clearly claim 16 is patentable over the applied art.

Claims 17-20, 23-25, and 27-32 are dependent directly or indirectly from independent claim 16 and are asserted as being patentable for the same reasons as discussed with respect to claim 16, for the combinations in the dependent claims as well as for the additional limitations recited in the dependent claims. Note for example claim

17 reciting in part "wherein the adhesive is corn syrup between 9% and 15%". Claim 19 recites "wherein the adhesive is corn syrup between 9% and 15% by weight and sugar between 0% and 21% by weight". Claim 29 recites in part "wherein the wetting agent is between 11 and 21 percent". None of the references taken singly or in combination teach or suggest the claimed combinations.

Claim 22 is an independent composition claim and recites in part:

"consisting essentially of an adhesive between 9% and 36% by weight, water between 40% and 60% by weight, a wetting agent between 0% and 21% by weight, and a viscosity/texture modifier between 0% and 3% by weight wherein the composition has a viscosity between approximately 100cp and 3000 cp."

None of the applied references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or an adhesive between 9% and 36% by weight and a wetting agent between 0% and 21% by weight. None of the applied art taken singly or in combination teach or even suggest that adhesives can be used in concentrations as low as 36% or even lower. All use adhesive concentrations 40% or greater, and the general rule seems to be in the range of 60 to 80% or more. While Albert refers to a lower boundary of 40%, the only suggestion in the art is that adhesive concentrations are higher, not lower. Also, none of the references teach or suggest alone or in combination the adhesive concentration in the recited viscosity range. Clearly claim 22 is patentable over the applied art.

Claim 26 is an independent composition claim and recites in part:

"consisting essentially of an adhesive between 9% and 36% by weight, water between 40% and 60% by weight, a viscosity/texture modifier between 0% and 3% by weight and a wetting agent between 0.25 percent by weight and 2 percent by weight. "

None of the applied references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or an adhesive between 9% and 36% by weight and a wetting agent between 0.25 percent by weight and 2 percent by weight. None of the applied art taken singly or in combination teach or even suggest that adhesives can be used in concentrations as low as 36% or even lower, and the general rule seems to be in the range of 60 to 80% or more. The only suggestion in the art is that adhesive concentrations are higher, not lower than Albert's 40%. Clearly claim 26 is patentable over the applied art.

Claim 33 is an independent composition claim and recites in part:

"consisting essentially of an edible lipophilic and hydrophilic adhesive composition between 9% and 36% by weight including at least one of a wetting agent between 0.025% and 21% by weight and a texture/viscosity modifier between 0-3% by weight, and including water between 40%-69% by weight"

None of the applied references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or an edible lipophilic and hydrophilic adhesive composition between 9% and 36% by weight including at least one of a wetting agent between 0.025% and 21% by weight and a texture/viscosity modifier between 0-3% by weight. As the Office Action does not address claim 33 specifically, it is difficult to comment further about the applied art relative to this claim. Therefore, nothing in the Office Action establishes that this claim is obvious, and in fact it is not obvious in view of the applied art.

Claims 35 and 47-48 are dependent directly or indirectly from independent claim 33 and are asserted as being patentable for the same reasons as discussed with respect to claim 33, for the combinations in the dependent claims as well as for the additional limitations recited in the dependent claims.

Claim 39 is an independent composition claim and recites in part:

“consisting essentially of an edible lipophilic and hydrophilic composition including a wetting agent between 0.025% and 21% by weight and at least one of sugar and corn syrup between 9% and 36% by weight in an aqueous solution of 40%-69% by weight water”

None of the applied references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or a wetting agent between 0.025% and 21% by weight and at least one of sugar and corn syrup between 9% and 36% by weight in an aqueous solution of 40%-69% by weight water. As the Office Action does not address claim 33 specifically, it is difficult to comment further about the applied art relative to this claim. Therefore, nothing in the Office Action establishes that this claim is obvious, and in fact it is not obvious in view of the applied art.

Claims 41, and 44-45 are dependent directly or indirectly from independent claim 39 and are asserted as being patentable for the same reasons as discussed with respect to claim 39, for the combinations in the dependent claims as well as for the additional limitations recited in the dependent claims.

This response is being filed with a Petition for A Three-Month Extension of Time.

A Second Information Disclosure Statement is filed concurrently herewith.

Application No.: 10/807,947
Amendment dated: February 18, 2009
Reply to Office Action of: **August 18, 2008**
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Please charge any additional fees that may be due or credit any overpayments to our deposit Account No. 50-0655. If a petition is required in conjunction with this paper, please consider this a request for such a petition.

Respectfully submitted,

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